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COUNTY OF SANTA CLARA

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH RAY LAW,	)	No. C08-01664 RMW
Plaintiff,	)	
v.	)	<b>DEFENDANT COUNTY OF SANTA</b>
	)	<b>CLARA'S ANSWER TO PLAINTIFF'S</b>
CITY OF SAN JOSE, COUNTY OF	)	<b>COMPLAINT FOR DAMAGES</b>
SANTA CLARA, OFFICER	)	
ARDIZZONE,	)	<b>(Demand for Jury Trial)</b>
Defendants.	)	

Defendant, County of Santa Clara ("County" or "Defendant"), hereby answers Plaintiff's Complaint for Damages, and admits, denies, and alleges as follows:

**I.**

**PARTIES AND BACKGROUND FACTS**

1. Answering the allegations of Paragraph 1, Defendant alleges that it has no information or belief sufficient to enable it to answer said allegations as only Plaintiff possesses information as to the purported basis for his civil rights and state law claims, and on that ground denies each and all of the allegations therein.

2. Answering the allegations of Paragraph 2, Defendant alleges that it has no information or belief sufficient to enable it to answer said allegations as only Plaintiff possesses information as to the purported jurisdiction for his civil rights and state law claims, and on that ground denies each and all of the allegations therein.

1           3.     Answering the allegations of Paragraph 3, Defendant alleges that it has no present  
2 information or belief sufficient to enable it to answer said allegations, and on that ground denies  
3 each and all of the allegations therein.

4           4.     Answering the allegations of Paragraph 4, Defendant alleges the City of San Jose is a  
5 city within the State of California and, except as expressly alleged, Defendant has no present  
6 information or belief sufficient to enable it to answer said allegations, and on that ground denies  
7 each and all of the allegations therein.

8           5.     Answering the allegations of Paragraph 5, Defendant alleges the County of Santa  
9 Clara is a county within the State of California and in certain instances has the capacity to sue  
10 and be sued. Except as expressly alleged, Defendant has no present information or belief  
11 sufficient to enable it to answer said allegations, and on that ground denies each and all of the  
12 allegations therein.

13           6.     Answering the allegations of Paragraphs 6, 7, and 8, Defendant alleges that it has no  
14 present information or belief sufficient to enable it to answer said allegations, and on that  
15 ground denies each and all of the allegations therein.

16           7.     Answering the allegations of Paragraph 9, Defendant alleges Plaintiff was in the  
17 custody of the County's Department of Correction from March 27, 2006 to September 28, 2006,  
18 and denies that the County "falsely imprisoned" Plaintiff. Except as expressly alleged,  
19 Defendant has no present information or belief sufficient to enable it to answer said allegations,  
20 and on that ground denies each and all of the allegations therein.

21           8.     Answering the allegations of Paragraph 10, Defendant - for itself - denies each and  
22 all of the allegations therein. Except as expressly denied, Defendant has no present information  
23 or belief sufficient to enable it to answer said allegations, and on that ground denies each and all  
24 of the allegations therein.

25           9.     Answering the allegations of Paragraphs 11 and 12, Defendant alleges that it has no  
26 present information or belief sufficient to enable it to answer said allegations, and on that  
27 ground denies each and all of the allegations therein.

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10. Answering the allegations Plaintiff's Prayer, Defendant alleges that Plaintiff is not entitled to any compensatory or punitive damages against this Defendant and, further, is not entitled to receive any award of costs and attorney's fees against this Defendant.

WHEREFORE, Defendant prays for judgment in its favor as hereinafter set forth.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that the complaint, and each and every cause of action and/or claim for relief thereof, fails to state facts sufficient to constitute a cause of action and/or claim for relief against this answering Defendant.

#### **SECOND AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff was careless and negligent in and about the matters alleged in the complaint, and that said carelessness and negligence on the Plaintiff's own part proximately contributed to the damages complained of, if any there were. Under the doctrine of comparative negligence, Plaintiff's comparative negligence shall reduce any and all damages sustained by said Plaintiff.

#### **THIRD AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that said damages, if any, sustained by Plaintiff were either fully or in part the fault of others, whether that fault be the proximate result of negligence, strict liability, breach of warranty, breach of contract, or any other type of fault caused by persons, firms, corporations or entities other than this answering Defendant, and that said negligence or fault comparatively reduces the percentage of fault or negligence, if any, by this answering Defendant.

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**FOURTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff was actively negligent in and about the matters alleged in the complaint, and thereby barred from any recovery.

**FIFTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that the provisions of the "Fair Responsibility Act of 1986" (commonly known as Proposition 51, Civil Code Sections 1430, 1431, 1431.1, 1431.2, 1431.3, 1431.4, 1431.5 and 1432) are applicable to this action to the extent Plaintiff's injuries and/or damages, if any there were or are, were proximately caused or contributed to by the carelessness, negligence or fault of persons or entities other than this answering Defendant.

**SIXTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff failed to mitigate his damages.

**SEVENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff, by reason of his own acts and/or omissions, waived any claims, if any there be, as alleged therein.

**EIGHTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff, by reason of his own acts and/or omissions, is equitably estopped from asserting any claim, if any there be, as alleged therein.

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**NINTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff, by virtue of having been the sole or major contributing factor to the alleged damages of which Plaintiff now complains, based upon his own fault or misconduct, is guilty of unclean hands and therefore barred from obtaining the relief sought in the complaint by that principle, as well as by the principle of *in pari delicto*.

**TENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff was guilty of willful misconduct in and about the matters complained of in the complaint and that the aforesaid misconduct on Plaintiff's own part proximately contributed to the damages of which he now complains.

**ELEVENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that they are entitled to the benefits, defenses, rights, immunities and provisions of Assembly Bill I through XX of the State of California for the year 1975 and which is more commonly known as the Medical Injury Compensation Reform Act (MICRA); that said benefits, defenses, immunities and provisions are set forth and contained within Business and Professions Code §6146; Civil Code §§3333.1 and 3333.2; Code of Civil Procedure §§364, 365 and 667.7.

**TWELFTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that the acts and/or omissions complained of in the complaint were consented to by Plaintiff.

**THIRTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that their

conduct, at all times referenced therein, was privileged and/or justified.

**FOURTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff failed to (1) exhaust his administrative and/or other remedies and/or (2) satisfy other jurisdictional and/or procedural prerequisites prior to filing suit.

**FIFTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff failed to comply with the provisions of the California Tort Claims Act.

**SIXTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff had full knowledge that this defendant did not breach any duty and/or obligation.

**SEVENTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that, at all times therein, Defendant acted with a good faith belief in the propriety of its conduct, and performed and discharged in good faith each and every duty and/or obligation, if any, owed to Plaintiff.

**EIGHTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that any alleged duty and/or obligation of Defendant was exonerated, discharged and/or released by Plaintiff's acts and/or omissions.

**NINETEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that its conduct was proper, legal and in substantial compliance with all applicable regulations, codes, statutes

1 and/or ordinances.

2 **TWENTIETH AND SEPARATE AFFIRMATIVE DEFENSE**

3 As a separate, distinct and affirmative defense to the complaint, and to each and every  
4 cause of action and/or claim for relief thereof, this answering Defendant alleges that any acts  
5 and/or omissions on the part of Defendant was discretionary and not ministerial in nature.

6 **TWENTY-FIRST AND SEPARATE AFFIRMATIVE DEFENSE**

7 As a separate, distinct and affirmative defense to the complaint, and to each and every  
8 cause of action and/or claim for relief thereof, this answering Defendant is informed and  
9 believes, and thereon alleges, that at all times the representations, if any, made by it to Plaintiff  
10 was, to the best of its knowledge, true.

11 **TWENTY-SECOND AND SEPARATE AFFIRMATIVE DEFENSE**

12 As a separate, distinct and affirmative defense to the complaint, and to each and every  
13 cause of action and/or claim for relief thereof, this answering Defendant is informed and  
14 believes, and thereon alleges, that at no time did it seek to suppress any facts and/or information  
15 that it was duty bound to disclose to Plaintiff and did not seek to disclose to Plaintiff any facts  
16 and/or information which were likely to mislead Plaintiff.

17 **TWENTY-THIRD AND SEPARATE AFFIRMATIVE DEFENSE**

18 As a separate, distinct and affirmative defense to the complaint, and to each and every  
19 cause of action and/or claim for relief thereof, this answering Defendant is informed and  
20 believes, and thereon alleges, that at no time did it seek to deceive Plaintiff respecting the  
21 representations, if any, made by Defendant to Plaintiff.

22 **TWENTY-FOURTH AND SEPARATE AFFIRMATIVE DEFENSE**

23 As a separate, distinct and affirmative defense to the complaint, and to each and every  
24 cause of action and/or claim for relief thereof, this answering Defendant is informed and  
25 believes, and thereon alleges, with respect to the acts or omissions and/or other conduct  
26 complained of by Plaintiff as against this answering Defendant, and with respect to the resulting  
27 actions taken and/or not taken by Plaintiff, there was not justifiable reliance by Plaintiff.

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**TWENTY-FIFTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant is informed and believes, and thereon alleges, that it had no knowledge of the alleged falsity of any representations, if any, complained of by Plaintiff.

**TWENTY-SIXTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant is informed and believes, and thereon alleges, that it made no representations, expressly or impliedly, to Plaintiff upon which Plaintiff may base any cause of action.

**TWENTY-SEVENTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant is informed and believes, and thereon alleges, that any statements made by it to Plaintiff were, either in whole or in part, matters of opinion.

**TWENTY-EIGHT AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that any acts and/or omissions on the part of Defendant was subjectively and/or objectively reasonable so as to entitle Defendant to absolute or qualified immunity based upon applicable State or Federal law for any acts and/or omissions within the course and scope of employment.

**TWENTY-NINTH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that Plaintiff's complaint, and each and every cause of action and/or claim for relief therein, is barred by the provisions of Government Code §§ 810 through 1000, inclusive, including, but not limited to, Sections 815, 815.2, 815.3, 815.4, 815.6, 818, 818.2, 818.4, 818.6, 818.8, 820, 820.2, 820.4, 820.6, 820.8, 821, 822.2, 830.2, 830.5, 830.6, 831.2, 831.25, 835, 835.2, 835.4, 840, 840.2,



840.4, 840.6, 844.6, 845.6, 855.8, and 856.

**THIRTIETH AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that the complaint, and each and every cause of action and/or claim for relief thereof, is barred by the statute of limitations as stated in Part 2, Title 2, Chapter 2 of the California Code of Civil Procedure, beginning with Section 315 and continuing through Section 349.4 and, more particularly, but not limited to, Sections 335.1, 337, 337.1, 337.15, 337.2, 338, 339, 340, 340.5, 340.6, 342, and 343.

**THIRTY-FIRST AND SEPARATE AFFIRMATIVE DEFENSE**

As a separate, distinct and affirmative defense to the complaint, and to each and every cause of action and/or claim for relief thereof, this answering Defendant alleges that it is entitled to recover reasonable expenses, including attorneys' fees, from Plaintiff and his counsel in that Plaintiff's complaint on file herein is frivolous and was brought and maintained in bad faith and without reasonable cause, is totally and completely without merit, and was brought for the sole purpose of harassing this Defendant.

WHEREFORE, this answering Defendant prays that Plaintiff take nothing by way of his complaint, that Defendant have judgment for its costs of suit incurred herein, together with such other and further relief as the court may deem just and proper.

Dated: June 20, 2008

Respectfully submitted,

ANN MILLER RAVEL  
County Counsel

By: /S/  
GREGORY J. SEBASTINELLI  
Deputy County Counsel

Attorneys for Defendant  
COUNTY OF SANTA CLARA

**JURY DEMAND**

Defendant County of Santa Clara hereby demands a trial by jury.

Dated: June 20, 2008

Respectfully submitted,

ANN MILLER RAVEL  
County Counsel

By:                     /S/                      
GREGORY J. SEBASTINELLI  
Deputy County Counsel

Attorneys for Defendant  
COUNTY OF SANTA CLARA

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